IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6335 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

R K SAVJANI

Versus

K R SHANKARAN - GENERAL MANAGER

Appearance:

1. Special Civil Application No. 6335 of 2003

M/S THAKKAR ASSOC. for Petitioner No. 1

MR GN SHAH for Respondent No. 1-3

MR A.K. CLERK WITH MS MINOO A SHAH for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 26/08/2004

ORAL JUDGEMENT

1. The petitioner by way of this petition has challenged the order of the respondent dated 17-1-2003 which was confirmed by the Appellate Authority on 28-4-2003 at Annexure-K to the petition. The petition is required to be allowed only on the observation of the Appellate Authority in the appellate order. On page-103 the Appellate Authority observed as under:-

> " On my final analysis, I find that fair and proper enquiry has been conducted and the principles of natural justice and provisions of the Standing Orders have been fully observed and followed. Shri Savajani was given a free, fair and full opportunity to defend his case. However Shri Savajani did not produce any documents or witnesses to prove his innocence or to disprove the witnesses and documents produced by the presenting Officer. In fact the issues raised by him in his reply to the Enquiry Officer's report and the appeal has excessive reliance on the enquiries conducted against Shri Zala and Shri Rathod which by itself is wrong as all the enquiries are independent in nature and comparisons cannot be drawn between them. It is well settled that unlike criminal cases, in domestic enquiries the onus is on the employee to prove his innocence by adducing documentary and oral evidence before the enquiring authority. I find that Shri Savajani has not adduced any evidence in the enquiry to prove his innocence. His only contention is that he is given more severe punishment than the other co-accused i.e. S/Shri Zala and Rathod. But I find S/Shri Zala and Rathod have adduced oral evidence in their respective enquiries in support of their case. Further the gravity of misconducts which have been committed by all the three and established in the enquiries conducted independently differs. Therefore obviously the Disciplinary Authorities have imposed punishments commensurate with the misconducts prove. "

2. The reasonings given by the appellate authority are not in consonance with the principle of disciplinary proceedings, therefore, in my view, this requires to be quashed and requires reconsideration by the appellate authority.

3. In this view of the matter, the appellate authority is required to reconsider the case afresh and

also to reconsider decision of the disciplinary authority's order dated 17-1-2003 afresh, without influenced by the earlier order dated 28-4-2003 of the appellate authority.

4. It will be open for the petitioner to adduce / argue all points which are raised before the appellate authority earlier. Since I am remanding the matter to the appellate authority for reconsideration, I am not entering into merits of the matter, and therefore, I am not making any observation keeping in mind the interest of both the sides.

5. The final order of the appellate authority dated 28-4-2003 is quashed and set aside. The appellate authority shall consider the appeal of the petitioner afresh. The appellate authority shall decide the appeal of the petitioner within 3 months from the date of receipt of writ of this order.

6. Petition is disposed of accordingly. Rule is made absolute to the aforesaid extent. No order as to costs.

Dt: 26-8-2004 (K.S. JHAVERI, J)

/vgn